

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

RICHARD SCHIFFMANN,  
Plaintiff,

v.

C.A. No. 12-695 ML

UNITED STATES OF AMERICA,  
Defendant.

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UNITED STATES OF AMERICA,  
Counterclaim Plaintiff,

v.

RICHARD SCHIFFMANN, GEORGE STROUTHOPOULOS,  
ERWIN W. VAHLSING, JR., and STEPHEN  
CUMMINGS,  
Counterclaim Defendants.

**MEMORANDUM AND ORDER**

This matter is before the Court on the United States of America's ("United States" or "Government") motion for summary judgment on Richard Schiffmann's ("Schiffmann") complaint and Stephen Cummings' ("Cummings") counterclaim.

**I. Background**

Schiffmann filed a complaint against the United States for the recovery of federal payroll taxes assessed and collected. The United States answered the complaint and filed counterclaims, to collect outstanding taxes, against Schiffmann, Cummings, George Strouthopoulos, and Erwin Vahlsing. Cummings answered the complaint and filed a counterclaim against the United States for the recovery of federal payroll taxes assessed and collected.

The Government initially moved for summary judgment on its counterclaims but did not move for summary judgment on the Schiffmann complaint or the Cummings' counterclaim. See

Docket # 33. The Court granted the Government's motion. See Docket # 40. Subsequent to the Court's summary judgment decision, the Court inquired of counsel about the status of the Schiffmann complaint. See Docket # 41. The Court determined that, in light of the summary judgment decision, Schiffmann's claims were without merit. Id. Thus, the Court ordered the Clerk to enter judgment in favor of the Government on the Government's counterclaims and Schiffmann's complaint. Id. One day after judgment entered, however, the Court held a telephone conference with the parties and vacated that order. See April 16, 2014 Text Order.

The Court subsequently gave the Government permission to file a second motion for summary judgment on the Schiffmann complaint and the Cummings counterclaim. The Government filed its motion supported by a memorandum of law and a statement of undisputed facts. Schiffmann and Cummings objected and filed a joint memorandum of law and a statement of disputed facts.<sup>1</sup>

## **II. Summary Judgment**

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). An issue is "genuine" if the pertinent evidence is such that a rational factfinder could resolve the issue in favor of either party, and a fact is "material" if it "has the capacity to sway the outcome of the litigation under the applicable law." National Amusements, Inc. v. Town of Dedham, 43 F.3d 731, 735 (1st Cir. 1995).

The moving party bears the initial burden of showing the Court that no genuine issue of material fact exists. Id. Once the moving party makes this showing, the non-moving party must point to specific facts demonstrating a trialworthy issue. Id. The Court views all facts and draws

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<sup>1</sup>Although Schiffmann and Cummings filed two documents labeled a statement of undisputed facts and a statement of disputed facts, counsel actually filed the same statement of disputed facts twice.

all reasonable inferences in the light most favorable to the nonmoving party. Continental Casualty Co. v. Canadian Universal Insurance Co., 924 F.2d 370 (1st Cir. 1995).

### **III. Analysis**

The Court has carefully reviewed the parties' submissions. Schiffmann's and Cummings' "disputed" facts are for the most part not material or not properly supported. The substance of Schiffmann's and Cummings' present position is similar to the arguments previously presented to, and rejected by, the Court. The Court has reviewed its prior decision in light of the parties' current submissions. The Court finds no new evidence or principle of law which would warrant a different result on this motion. In so ruling, the Court incorporates by reference its April 9, 2014, decision on summary judgment.

### **IV. Conclusion**

The Government's motion for summary judgment is granted. The Clerk is directed to enter judgment in favor of the Government on the Government's counterclaims, Schiffmann's complaint and Cummings' counterclaim.

SO ORDERED

/s/ Mary M. Lisi  
Mary M. Lisi  
United States District Judge  
October 3, 2014